

**IN THE CLAIMS**

1. (Canceled)

2. (Currently Amended)      The auto-focus apparatus according to claim [[1]] 5,  
wherein said emitting means emits an infrared ray emitted from an eye safe laser diode.

3. (Currently Amended)      The auto-focus apparatus according to claim [[1]] 5,  
wherein said emitting means controls emission power of said irradiation wave in accordance  
with a change in the emitting angle of said irradiation wave.

4. (Canceled)

5. (Currently Amended)      An ~~The~~ auto-focus apparatus ~~according to claim 4~~,  
comprising:

emitting means for emitting an irradiation wave for irradiation to a subject while  
changing an emitting angle of said irradiation wave;

detecting means for detecting an incident angle of a reflected wave of said  
irradiation wave reflected by said subject, incident on light receiving means positioned  
corresponding to said emitting means;

determining means for determining based on said emitting angle and said incident  
angle whether or not said subject is a subject for which the focus should be adjusted; and

adjusting means for adjusting the focus on said subject when determining that said  
subject is the subject for which the focus should be adjusted, wherein

said determining means comprises a storage means for storing sampling data of  
said emitting angle and said incident angle, and

wherein said determining means comprises a storage means for storing  
correspondence data of said emitting angle and said corresponding incident angle.

6. (Canceled)

7. (Currently Amended) The focus adjusting method according to claim [[6]]  
10, wherein said emitting means emits an infrared ray emitted from an eye safe laser diode.

8. (Currently Amended) The focus adjusting method according to claim [[6]]  
10, wherein said emitting means controls emission power of said irradiation wave in accordance  
with a change in the emitting angle of said irradiation wave.

9. (Canceled)

10. (Currently Amended) ~~A~~ The focus adjusting method according to claim 6,  
comprising the steps of:

emitting an irradiation wave from irradiating means for irradiation to a subject  
while changing an emitting angle of said irradiation wave;

detecting an incident angle of a reflected wave of said irradiation wave reflected  
by said subject, incident on light receiving means positioned corresponding to said emitting  
means;

determining based on said emitting angle and said incident angle whether or not said subject is a subject for which the focus should be adjusted; and

adjusting the focus on said subject when determining that said subject is the subject for which the focus should be adjusted,

wherein said determination is made based upon stored sampling data of said emitting angle and said incident angle, and

wherein in said determination, said sampling data is selected based upon stored correspondence data of said emitting angle and said corresponding incident angle.

11. (Canceled)

12. (Currently Amended) The image capturing apparatus according to claim [[11]] 15, wherein said emitting means emits an infrared ray emitted from an eye safe laser diode.

13. (Currently Amended) The image capturing apparatus according to claim [[11]] 15, wherein said emitting means controls emission power of said irradiation wave in accordance with a change in the emitting angle of said irradiation wave.

14. (Canceled)

15. (Currently Amended) An The image capturing apparatus according to ~~claim 14~~, comprising:

emitting means for emitting an irradiation wave for irradiation to a subject while changing an emitting angle of said irradiation wave;

detecting means for detecting an incident angle of a reflected wave of said irradiation wave reflected by said subject, incident on light receiving means positioned corresponding to said emitting means;

determining means for determining based on said emitting angle and said incident angle whether or not said subject is a subject for which the focus should be adjusted; and

adjusting means for adjusting the focus on said subject when determining that said subject is the subject for which the focus should be adjusted, wherein said determining means comprises a storage means for storing sampling data of said emitting angle and said incident angle, and

wherein said determining means comprises a storage means for storing correspondence data of said emitting angle and said corresponding incident angle.

16. (Canceled)

17. (Currently Amended) The image capturing method according to claim [[16]] 20, wherein said emitting means emits an infrared ray emitted from an eye safe laser diode.

18. (Currently Amended) The image capturing method according to claim [[16]] 20, wherein said emitting means controls emission power of said irradiation wave in accordance with a change in the emitting angle of said irradiation wave.

19. (Canceled)

20. (Currently Amended) ~~An~~ The image capturing method according to claim 19, comprising the steps of:

emitting an irradiation wave from irradiating means for irradiation to a subject while changing an emitting angle of said irradiation wave;

detecting an incident angle of a reflected wave of said irradiation wave reflected by said subject, incident on light receiving means positioned corresponding to said emitting means;

determining based on said emitting angle and said incident angle whether or not said subject is a subject for which the focus should be adjusted; and

adjusting the focus on said subject when determining that said subject is the subject for which the focus should be adjusted, wherein said determination is made based upon stored sampling data of said emitting angle and said incident angle, and

wherein in said determination, said sampling data is selected based upon stored correspondence data of said emitting angle and said corresponding incident angle.